

2006 Settlement Agreement

This Settlement Agreement is entered into this 5th day of May, 2006, by and between the State of Tennessee (“State”), the United States of America, and People First of Tennessee (“People First”), (collectively the “Parties to this Agreement”). This Settlement Agreement shall hereinafter be referred to as the “Agreement.”

I. RECITALS

Whereas, the Parties to this Agreement desire to resolve those differences that resulted in the filing of People First’s Motion to Show Cause (the “Show Cause Motion”) and the issuance of the Order Requiring Defendants to Appear and Show Cause (the “Show Cause Order”), which was entered on April 5, 2004 relative to contempt in *United States v. Tennessee*, No. 92-2062 (W.D. Tenn. (Judge Donald));

Whereas, the Parties to this Agreement desire to resolve and fully settle all claims arising between them in connection with the appeal pending in the United States Court of Appeals for the Sixth Circuit in the Matter of *United States v. Tennessee*, Case Number 00-6120, regarding the proper interpretation of the “at-risk” portion of the class definition in this matter;

Whereas, the State has made the policy decision to close the Arlington Developmental Center (“ADC”) and to provide services to persons currently residing at ADC in a more integrated setting, and the other parties to this Agreement approve and support this decision; and,

Whereas the Parties to this Agreement desire to ensure that the transition of individuals from ADC into the community is effected in a safe and appropriate manner;

Now, therefore, the Parties to this Agreement hereby agree as follows:

II. CLOSURE OF ADC

Given the above-referenced intent of the Parties to this Agreement, factors and circumstances, the Parties to this Agreement agree to the following:

- A. Based on the fact that all persons presently residing at ADC have been recommended for transition to appropriate community programs, the State shall, within one hundred twenty (120) days from the approval of this Agreement by the United States District Court, produce a proposed Closure Plan for ADC to manage the closure process. Upon the execution of the Agreement, the State shall use its best efforts to develop a Closure Plan in order to reduce the 120-day period and, in any event, the State agrees to produce a draft Closure Plan to the Monitor and the Parties to this Agreement for their review on or before May 1, 2006.

- B. While the Closure Plan will not be a substitute for ADC class members' individual transition plans, it shall identify the number and types of services that class members who presently live at ADC are projected to need in the community. These services will be based on evaluations and assessments, including the assessments of persons who are medically fragile (conducted by Karen Green-McGowan, Medical Status Assessor) and the assessments of persons who present serious behavioral challenges (conducted by Eddy Hughes, Behavioral Status Assessor). The Closure Plan will also include an analysis of existing numbers and types of services in the community and will address how the State will expand and build capacity to meet the projected needs of class members. In addition, the Closure Plan will address the outreach efforts that the State is to undertake to ensure that family members are kept apprised of pertinent matters related to the closure activity.
- C. The Closure Plan will contain specific, measurable objectives and outcomes and sufficient detail to facilitate the monitoring of ongoing closure activity, including projected six-month benchmarks for the census of ADC.
- D. Following completion of the Closure Plan by the State, it will be reviewed by the Parties to this Agreement and the Monitor. The Parties to this Agreement shall have thirty (30) days to submit to the State and the Monitor, in writing, specific proposed changes to the Closure Plan. The State will make a good faith effort to incorporate the specific changes proposed by the Parties to this Agreement. The State, in collaboration with the Monitor, shall then have thirty (30) days in which to finalize the Closure Plan. This initial Closure Plan shall be subject to the approval of the Monitor. It is anticipated that the Closure Plan will be a working document and revised by the State on a regular basis. Any substantial changes to the Closure Plan shall be subject to approval by the Monitor.
- E. The State will submit written reports to the Parties to this Agreement and the Monitor regarding the transition status of ADC class members every two months. The precise format of the reports shall be designed by the State and approved by the Monitor. The frequency of the reports can be modified by the agreement of the Parties to this Agreement.
- F. The State will close ADC within a timeframe to be established in the Closure Plan.

III. TRANSITION

- A. The State's Division of Mental Retardation Services ("DMRS") has completed an evaluation of each ADC resident to determine the severity of his or her medical and/or behavioral needs using evaluation instruments that are consistent with best practices ("Evaluations"). There is a written report on each such ADC resident that makes specific recommendations on services needed and identifies appropriate models of care in the least restrictive environment in the community ("Assessments").
- B. DMRS will continue to enhance outreach efforts and offer information to families and/or conservators of ADC residents to educate them about the available options for services. In addition, the State will post copies of CMS and TennCare system reviews, if any, and DMRS Quality Assurance Report Cards, related to services and supports to class members. Families and/or conservators will be notified of the availability of these reports on the website. In addition, the Monitor will continue to make copies of the Monitor's community status reviews available to the families and/or conservators.

DMRS will provide this information and outreach for a reasonably sufficient period of time prior to interviewing ADC residents, and families and/or conservators as to choice of services. Through the interview process, the families and/or conservators, and, when possible, the ADC residents themselves, will be informed of the interdisciplinary team recommendation(s) and requested to prioritize their choice of service from the recommended, available options. In addition, the State will work with families to discuss and consider models for residential and other services and supports for class members, such as the Creative Community Living model located in Winfield, Kansas; the Lynch model in Pennsylvania; or other such models that could be adapted based on individual needs and requirements, for medically at-risk individuals and those with significant behavioral challenges.

For the first year following approval of this Agreement by the United States District Court, the State shall provide quarterly reports to the Parties to this Agreement and Monitor regarding its compliance with these outreach requirements.

- C. At the appropriate time during the transition process, complete Transition Plans will be developed for all class members currently living at ADC. Designated community residential providers, assigned Independent Support Coordinators, families/conservators, the class members, and other informed parties will be involved in this planning process. Timelines for the development of Transition Plans for individual class members will be tied to the outcomes/objectives and the six-month benchmarks established in the Closure Plan pursuant to Section II.C. of this Agreement.
- D. Placement in settings outside ADC will be consistent with the Agreed Order of June 26, 1996; the Community Plan for West Tennessee, Chapter VII; and the

provisions of Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, *et seq.* Nothing in this Agreement shall be construed to buttress, diminish or affect in any way whatsoever the continued applicability or enforceability of any provision of the Remedial Order and/or the Order on the Community Plan.

- E. The Parties to this Agreement recognize that an ADC resident's transition plan will remain subject to modification based on the changing needs of the ADC resident and the availability of providers that are appropriate for the ADC resident.
- F. The ADC resident or the ADC resident's legal conservator, if any, shall be informed of the range of choices of models of care and types of service providers available to the ADC resident, consistent with Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, *et seq.*, and regulations promulgated in connection with that act. At that time, they will be provided an opportunity to update their freedom-of-choice form. The State will honor the freedom-of-choice selection with respect to intermediate care facilities for the mentally retarded ("ICF/MR") or waiver services for each class member. ADC residents shall be transitioned, in priority of their or their legal conservator's choice, to a willing service provider with space available to accept the ADC resident at the time of transition.

All services shall be consistent with the ADC resident's right to services that are developed by reasoned professional judgment and are in the most integrated setting appropriate. All ADC residents and/or their families and/or conservators will be given up to ninety (90) days to select a community provider. The State shall provide written notice to ADC residents and their legal conservators, if one has been appointed, of the commencement of the ninety-(90)-day period. If, after the selection period expires, the class member or a family member or legal conservator acting on behalf of the class member has not selected a provider, the State will match the class member with a community agency in good standing, consistent with the executed freedom-of-choice form, that is willing and able to support said class member. This provision does not preclude a class member, family member, or conservator from choosing, at any time, another appropriate community provider that has the then-current capacity to accept the class member, provided, however, that once a provider is selected for transition, then the transition must occur so long as the Monitor approves it, and then the class member or conservator may select another community provider if they so choose consistent with implementing the reasoned professional judgment about services to the class member at this or any future time.

Nothing herein shall be construed to affect or interfere with the progress through transition of those ADC residents who are in the active transition process at the time of the execution of this Agreement, including those ADC residents who have been evaluated and recommended by professional judgment for transition to Volunteers of America's medically fragile supported living homes.

IV. SERVICES AND SUPPORTS FOR FAMILIES, CONSERVATORS AND CLASS MEMBERS

In an effort to ease any anxiety that might accompany the transition of class members from ADC to the community, the State will provide resources and support to families, conservators, and class members in the following ways:

- A. The West Tennessee Region will develop a Family Assistance Program ("FAP"). FAP will provide short-term individual counseling services to families, conservators, and class members affected by the closure of ADC. Services to these families, conservators, and class members shall include:
 - 1. short-term individual counseling;
 - 2. service system education;
 - 3. service options education;
 - 4. development and implementation of mutual support and self-advocacy groups; and
 - 5. assistance in forming advocacy associations.
- B. As part of the transition process, the State shall inform the parents and/or conservators of the class member of the PGA and its contact information. For class members not residing at ADC at the time of the execution of this Agreement, the State shall send to their parents and/or conservators a letter approved by PGA informing them of PGA and its contact information.

V. DEVELOPMENT OF COMMUNITY SERVICES AND SUPPORTS

- A. In order to ensure the provision of appropriate community services and to meet the timetables contained in the Closure Plan, the State shall either provide or contract for community-based services to meet the needs of class members in accordance with the provisions of the Community Plan. It will be necessary for the State to foster the development of Tennessee providers to ensure that class members have a stable provider network.
- B. The State agrees to develop and operate twelve (12) ICF/MR homes interspersed in residential neighborhoods, with a maximum of four beds in each home, in the Arlington area or other area not more than five (5) miles from the Resource Center established pursuant to Section V.C., herein. Furthermore, the State may, at its sole discretion, build and operate additional State-run ICF/MR homes interspersed in residential areas.
- C. The State shall establish and operate a Resource Center in the Arlington area as set forth in the Closure Plan. The Resource Center shall provide, at a minimum, necessary specialized and clinical services not otherwise readily available to class

members residing in the community. The services to be provided at the Resource Center will be set forth in the Closure Plan.

- D. Following the transition of all persons from ADC, the State agrees to raze all of the current residential cottages. The State shall be allowed to use the Baker Building and other non-residential buildings located on the current ADC campus for any purpose it sees fit, including, but not limited to, use as DMRS's West Tennessee Regional Office.
- E. The State agrees to sell the land upon which ADC now sits provided that the State shall be able to retain the acreage necessary to use the Baker Building and other non-residential buildings, and to construct and operate the ICF/MR homes referenced and required pursuant to Section V.B., above. In addition, the State shall retain all land that is the subject of the leases currently existing between the State of Tennessee and the City of Arlington, as memorialized and registered in the Shelby County Register of Deeds, No. HB4982, No. LJ4956, No. JT3053, and No. LJ4955. In addition, the sale of land will be subject to existing easements. Any and all net proceeds obtained from the sale of the land shall be placed in an endowment fund (the "Endowment Fund"). The State shall use, at its sole discretion, the interest earned from and the principal of the Endowment Fund for any of the following purposes, and only for these purposes: housing for persons with developmental disabilities; the construction of the Resource Center; or other projects intended to benefit persons with developmental disabilities residing in West Tennessee.

VI. IMPROVEMENT OF COMMUNITY SERVICES AND SUPPORTS

It is necessary that the community-based services currently provided be improved and be consistent with reasoned professional judgment and that the new community-based services made necessary by the closure of ADC be effective, constitutional, and in compliance with statutory standards. Therefore, the State shall do the following:

- A. The State, in collaboration with Community Services Network, waiver nursing providers and the Monitor, will develop explicit performance standards for the provision of nursing and healthcare oversight services in community homes. The performance standards shall, at a minimum, specify requirements for appropriate healthcare oversight, the frequency of the services, documentation requirements, and monitoring requirements, including periodic monitoring of medication administration training and practices in community homes.
- B. The State will develop meaningful and real opportunities for class members, as professionally determined to be appropriate, to obtain competitive employment, supported work, and/or volunteer jobs in the community. The State will develop a job-coach-training program for staff leading to certification and an adequate salary. At the quarterly meetings of the Parties to this Agreement required pursuant to the Agreement, the State will provide a report on the number of jobs, types of jobs, the location of jobs, and hours per week or month worked by class members.

- C. Within 120 days of approval of this Agreement by the United States District Court, the State shall present to the Monitor and the Parties to this Agreement a proposal for an improved training program for direct-support staff in the community residential programs. The improved training program for such staff shall: (i) rely on a competency-based curriculum/instructional approach; (ii) delineate differential training requirements for entry-level employees and ongoing annual/biannual in-service training; (iii) include improved accessibility to instructional sessions through online instruction for some courses; and (iv) allow certified employees ready portability of their training certification. In addition, to the greatest extent practicable, the State will coordinate the development and delivery of its improved training program with the State's community college and university system, whereby completed coursework could be applied to existing certification and degree programs offered by these institutions. The improved training program for these staff members will be implemented within one year of the approval of this Agreement by the United States District Court.
- D. The State will also continue to maintain a community-college-based home manager certification program.
- E. For class members served in the community, DMRS will implement a person-centered approach in developing the Individual Support Plans ("ISP"). The ISP will focus on the class member's personal visions, preferences, strengths and needs relative to the home and work environment (real opportunities to obtain supported (competitive) employment, supported work and/or volunteer jobs and/or other activities), relationships, and leisure activities. This person-centered approach will determine the supports and/or skill-development programs needed to achieve the class member's visions through the development of outcomes, actions steps, and supports. Family, staff, and friends who know the class member the best will be encouraged to be contributors to this process. Implementation will be evaluated by Independent Support Coordinators ("ISCs") and as part of the DMRS Quality Assurance Program.
- F. DMRS will prepare a monthly Quality Management Data Report which captures information about incidents and investigations including overall rates, rates for specific types of investigations, and timeliness of completing investigation reports. The data contained in these reports will be used by DMRS managers to develop and implement service systems improvements for class members served in the community.

The State will compile incident and investigation information, by each provider agency, including the State, on a monthly basis. The data contained in these reports will be used by DMRS managers to assess provider performance and to determine if additional action or intervention is necessary. DMRS will continue to collect data for class members who currently reside or are placed in privately operated ICFs/MR.

In addition, DMRS will track and monitor the implementation of recommended corrective actions from community abuse/neglect investigation reports.

- G. For class members served in the community, DMRS will utilize a person-centered approach to annually assess each class member's communication skills to determine any need for skill development and the need for and the ability to use augmentative and alternative communication systems and equipment. When skill-development programs are written, they will address the communication skill to be learned and not solely the use of a device. Devices used in skill-development programs will be available throughout the day. Communication program materials and activities will be identified through the person-centered assessment process, including a class member's preferences, age-appropriateness of materials and activities used, and a class member's interests. For class members using sign language, at least one staff member per shift working with each such class member will be trained and able to utilize the signs that are a part of that class member's vocabulary and on those signs being taught as a part of a skill-development program.

DMRS West Tennessee Regional Office will obtain and maintain the equipment, materials, and supplies used to conduct adequate communication assessments for class members residing in the community.

- H. For class members served in the community, the delivery of clinical therapies in accordance with specific functional and measurable actions contained in ISPs will be tracked and recorded by ISCs in monthly reports and evaluated as part of the DMRS Quality Assurance Program. This information will be used by DMRS managers to assess provider performance and to determine if additional action or intervention is necessary. This process will also include a comparison of approved services in ISPs with services delivered. These processes are described in the Provider Manual and became effective on approval of the application for renewal of the Arlington waiver.
- I. The Parties to this Agreement agree that one component of an effective community system would be for service recipients to have the capacity to self-direct services. At the present time, the State has committed to making significant changes and improvements in its service delivery system. Because of the complexity of effectuating that system and the drain those efforts are on State personnel resources, and in an effort to allow those improvements to be achieved, the Parties to this Agreement agree that they will meet and confer in a good faith effort to develop language describing the development of a self-directed services component for the existing home and community-based waivers or the expansion of the existing self-determination waiver to include residential and other necessary services within twelve months of the approval of this Agreement by the Court.

VII. IMPROVEMENT OF ADC SERVICES AND SUPPORTS

- A. The State will use a person-centered approach in developing ISPs for each ADC resident. The ISP will focus on the ADC resident's personal visions, preferences, strengths and needs relative to the home and work environment (real opportunities to obtain supported (competitive) employment, supported work and/or volunteer jobs and/or other activities), relationships, and leisure activities. This person-centered approach will determine the supports and/or skill-development programs needed to achieve the ADC resident's visions through the development of outcomes, actions steps (skill-development programs), and/or supports. Family, staff, and friends who know the ADC resident best will be encouraged to be contributors to this process. In ISP meetings, outcome steps will be developed around the vision statements and the identified barriers. Programs and interventions will be developed as necessary to overcome the barriers or build on skills already established with a sufficient number and variety of skill-development programs. Each skill to be developed shall have a corresponding individualized, structured teaching program containing components within currently accepted professional practice, including data collection and analysis. Skill-development programs will be reviewed monthly by each ADC resident's interdisciplinary team to ensure they are leading to the vision(s) and outcome(s) identified. Reinforcers utilized will be based on individual preferences.

- B. ADC will complete a trend study on incident management and substantiated investigations of abuse/neglect/mistreatment semi-annually. The trend analyses will address the following:
 - 1. The number and rate of reportable incidents by type of incident, severity, individuals involved, and residential living unit/location; and
 - 2. An analysis of the substantiated reports of abuse, neglect, and mistreatment, the circumstances and precipitating events, victim and perpetrator characteristics, and the corrective, preventive, and disciplinary outcomes.

- C. At ADC, active treatment observations will be completed monthly. Appropriate engagement activities and materials will be provided based on each ADC resident's preferences, interests, and needs as identified in his or her ISP. Each ADC resident's interdisciplinary team will utilize this information to determine if activities and materials being used are age-appropriate and assess if a substitution can be made. At no time will a preferred material be taken away from an ADC resident if it would likely cause problems for that ADC resident. Reasonable efforts will be made to substitute age-appropriate items. Task partnering, a.k.a. teachable moments, will be used to provide opportunities for engagement of the ADC residents throughout the day including taking responsibility for his or her own life routines at naturally occurring times. The State will do quarterly observer reliability checks at ADC to ensure ADC residents are engaged in meaningful activities. Engagement percentages will be determined for each observation to include percentages of engagement occurring at the beginning of

the observation and will be used by interdisciplinary teams to develop continuous improvement strategies.

- D. At ADC, Behavior Analysts, with the assistance of the counseling associates, will regularly monitor implementation of the Behavior Development Plans for each assigned ADC resident through directly observing and interacting with staff conducting treatment sessions, and will keep documentation of these encounters. Behavior Analysts will keep a time sheet for one month as a baseline that will be used to identify the amount of time being spent directly with ADC residents and staff providing direct support. This information will be used to determine if adjustments need to be made. A review of the Behavior Analysts' documentation requirements will be completed to determine if paperwork can be reduced to allow for more direct contact. For two (2) years after the execution of this Agreement, the Behavior Analysts will complete a time sheet for one week each quarter to ensure a sufficient amount of time is being spent with the ADC residents and direct support staff.

- E. The State will utilize a person-centered approach at ADC to annually assess each ADC resident's communication skills to determine any need for skill development and the need for and the ability to use augmentative and alternative communication systems and equipment. When skill-development programs are written, they will address the communication skill to be learned and not solely the use of a device. Devices used in skill-development programs will be available throughout the day. Communication program materials and activities will be identified through the person-centered assessment process, including the ADC resident's interests. The State will provide, at ADC, communication services using a participatory approach and the interdisciplinary team will develop an idiosyncratic communication system for each ADC resident, including the use of sign language as appropriate. For ADC residents using sign language, at least one staff member per shift working with each such ADC resident will be trained and able to utilize the signs that are part of that ADC resident's vocabulary and on those signs being taught as a part of a skill-development program.

VIII. QUARTERLY MEETINGS OF THE PARTIES TO THIS AGREEMENT AND MONITORING

The Parties to this Agreement and the Monitor shall meet quarterly to review the implementation of this Agreement, including the status of the location of any state-run ICFs/MR and the implementation of the Closure Plan. It is envisioned that constructive discussions of problems, limitations, and successes that will further the achievement of the goals of this Agreement will take place.

The Monitor shall regularly assess the State's compliance with these provisions.

IX. MEET AND CONFER REQUIREMENTS

The Parties to this Agreement will attempt to resolve any claim of material breach of this Agreement through negotiations. Any Party to this Agreement claiming that a material breach has occurred under this Agreement will give notice of the claim in writing to the State and will propose a resolution of the issue. The State will have thirty (30) days following receipt of the written claim to respond in writing, unless the period is enlarged by agreement of the Parties to this Agreement. If the Parties to this Agreement are unable to reach an agreement, any Party to this Agreement shall request a conference with the Monitor. In the event that efforts at conciliation are unsuccessful, the Party to this Agreement asserting the claim may pursue relief before the United States District Court for the Western District of Tennessee. Notwithstanding the foregoing, if a class member faces an immediate danger to health and safety due to an alleged breach of this Agreement, the Parties to this Agreement may seek immediate enforcement from the District Court. In addition, nothing contained herein would prevent a Party to this Agreement from pursuing a motion for contempt or other relief concerning matters addressed in the existing orders of the Court, based upon its good faith belief that the State is not in compliance with its obligation to protect class members from harm and/or meet class members' treatment needs.

X. DISMISSAL OF SHOW CAUSE MOTION AND PENDING APPEAL

- A. Upon their execution of the Agreement, People First, and the State shall immediately notify the Sixth Circuit by appropriate means of the pending settlement of the appeal of issues relating to the "at-risk" portion of the class definition. Upon approval of the Agreement by the United States District Court, People First and the State shall file a joint motion to dismiss the current pending appeal before the Sixth Circuit regarding the correct definition of the "at-risk" portion of the class definition.
- B. The Parties to this Agreement will file a joint motion with the District Court asking the Court to approve the Agreement. In conjunction with the approval of this Agreement, the motion will request the District Court to agree to take the following steps:
 - 1. Agree that upon remand following the dismissal of the "at risk" appeal pursuant to Section X.A., it will vacate the Order of July 17, 2000 regarding the scope of the "at risk" class and issue a substitute Order that the class definition in *People First v. Arlington Developmental Center*, No. 2:92-cv-2213 (W.D. Tenn.) that reads "all persons at risk of being placed at Arlington Developmental Center," shall be construed as set forth in Section XI of this Agreement; and
 - 2. Vacate the Show Cause Order.
- C. Subsequent to the Court vacating the Show Cause Order, People First shall withdraw its Show Cause Motion.

- D. Each provision of this Agreement is contingent on, and subject to, the entry of the appropriate Order(s) by the District Court as described in this Agreement. Should the District Court refuse to enter any Order(s) related to this Agreement, or fail to approve the Agreement, then all provisions of the Agreement will be voided. In addition, should the timing of the District Court's approval of this Agreement and entry of the Orders related to this Agreement affect the timelines contemplated in this Agreement, then said dates and timelines will be adjusted accordingly.

XI. AT-RISK PORTION OF THE CLASS

The Parties to this Agreement agree that the class definition in *People First v. Arlington Developmental Center*, No. 2:92-cv-2213 (W.D. Tenn.), that reads "all persons at risk of being placed at Arlington Developmental Center," shall be construed as limited to the following persons:

All persons who reside in the geographic region served by ADC, *i.e.*, West Tennessee, and who:

- (1) meet Medicaid eligibility criteria for ICF/MR level of care; and
- (2) demonstrate a current need or desire for institutional placement by satisfying one of the following criteria:
 - a. persons residing in a nursing home, or in a public or private mental health facility on or after September 1, 2005;
 - b. persons residing in a private ICF/MR on or after September 1, 2005;
 - c. persons currently residing in the West Tennessee Region who are placed by the State in a public ICF/MR in Middle or East Tennessee on or after September 1, 2005; or
 - d. persons who are hospitalized on or after September 1, 2005, and who at the time of their discharge from the hospital, or from a respite, transition, or rehabilitation facility if they transitioned to it from the hospital following discharge, can no longer be supported appropriately at their pre-hospitalization place of residence due to their need for more intensive healthcare services and/or greater assistance/accommodations in meeting their daily personal care, training, treatment or mobility needs.

Furthermore, no additional persons can or will be added to the class pursuant to the "at risk" provision of the class definition once the State closes ADC, as evidenced by the transition of all ADC residents out of current residential units at ADC.

XII. MISCELLANEOUS

- A. Within one hundred twenty (120) days following the execution of this Agreement, the Parties to this Agreement, in conjunction with the Monitor, will enter into good faith discussions to develop objective and measurable exit criteria for the dismissal of this action.
- B. Upon the approval of this Agreement by the United States District Court, the Mediation Settlement Agreement, executed on or about December 10, 2001, and the Agreement Resolving Show Cause Motion, executed on or about December 1, 2004, will be void and unenforceable in any respect.
- C. This Agreement will be governed by and construed in accordance with Tennessee law.
- D. This Agreement may not be modified except in a writing signed by the Parties to this Agreement.
- E. This Agreement may be signed in counterparts.
- F. This Agreement will become final once the Court has approved it and will remain in effect while the Court retains jurisdiction in this matter.

FOR THE STATE OF TENNESSEE:

PAUL G. SUMMERS
Attorney General

/s/Dianne Stamey Dycus
DIANNE STAMEY DYCUS (9654)
Deputy Attorney General
GENERAL CIVIL DIVISION
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202
(615) 741-6420
LEO BEARMAN, JR. (8363)
BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ
165 Madison Avenue, Suite 2000
Memphis, TN 38103
(901) 526-2000
JONATHAN P. LAKEY (16788)
PIETRANGELO & COOK, PLC
6410 Poplar Ave., Suite 190
Memphis, TN 38119
(901) 685-2662

Date: May 5, 2006

FOR PEOPLE FIRST OF TENNESSEE, INC., for itself and on behalf of the Class:

By: /s/ Jack Derryberry
Jack Derryberry (3870)
Counsel for People First Of Tennessee, Inc.
Ward, Derryberry & Thompson
404 James Robertson Parkway
Suite 1720
Nashville, TN 37219

Date: May 5, 2006

FOR THE UNITED STATES:

TERRELL L. HARRIS
United States Attorney
Western District of Tennessee

JOE A. DYCUS
Assistant United States Attorney
167 North Main Street
800 Federal Building
Memphis, TN 38103
(901) 544-4231

WAN J. KIM
Assistant Attorney General
Civil Rights Division

/s/ Shanetta Y. Cutlar
SHANETTA Y. CUTLAR
Chief
Special Litigation Section

/s/ Judy C. Preston
JUDY C. PRESTON
Deputy Chief
Special Litigation Section

/s/ R. Jonas Geissler
R. JONAS GEISSLER
LINDA KEYSER
AMIE MURPHY
Trial Attorneys
Special Litigation Section
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 514-6255

Date: May 5, 2006